

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

Implementation of the Local
Competition Provisions of the
Telecommunications Act of 1996

CC Docket No. 96-98

Telephone Number Portability

CC Docket No. 95-116

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

The California Public Utilities Commission (California or the CPUC) and the People of the State of California hereby submit these comments in response to the *Third Order on Reconsideration in CC Docket No. 99-200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95-116 (Third Order)* released on March 14, 2002 by the Federal Communications Commission (FCC or Commission) in the above-captioned matters.

I. INTRODUCTION

In the Third Order, the Commission reconsiders its findings in the *Numbering Resource Optimization Third Report and Order* regarding local

number portability (LNP) and thousand-block number pooling requirements for carriers in the 100 largest Metropolitan Statistical Areas (MSAs).¹ Specifically, the Commission seeks comment on whether to extend the Local Number Portability (LNP) requirements to all carriers operating in the largest 100 Metropolitan Statistical Areas (MSAs) regardless, of whether the carrier receives a request to provide LNP.² The Commission also seeks comment on whether all carriers in the top 100 MSAs should be required to participate in thousand-block number pooling, regardless of whether they are required to be LNP capable.³ Lastly, the Commission seeks comment on whether all MSAs included in the Combined Metropolitan Statistical Areas (CMSAs) on the Census Bureau's list of the largest 100 MSAs should be included on the Commission's list of the top 100 MSAs.⁴ The CPUC offers comments on these proposals.

II. SUMMARY

The CPUC supports the FCC's proposal to extend the LNP requirements to all carriers operating in the largest 100 MSAs, regardless of whether the carrier receives a request to provide LNP. The benefits to competition and numbering resource optimization resulting from LNP implementation warrant a reinstatement of the Commission's original LNP requirement for all local exchange carriers and covered CMRS carriers in the largest 100 MSAs. The CPUC does not, however

¹ *Third Order on Reconsideration in CC Docket No. 99-200, Third Further Notice of Proposed Rulemaking in CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95-116*, Released March 14, 2002 (*Numbering Resource Optimization Third Report and Order* ¶1.)

² *Numbering Resource Optimization Third Report and Order* ¶1.

³ *Numbering Resource Optimization Third Report and Order* ¶1.

support the Commission's proposal to exempt from the LNP requirement certain small carriers that have switches either within the largest 100 MSAs, or in areas adjoining the largest 100 MSAs, but who provide service to no or to few customers within the MSA. The CPUC proposes that the FCC not exempt such carriers, but confer authority on the states to make individual determinations for an exemption on a case-by-case basis.

The CPUC further supports the Commission's tentative conclusion to require all carriers in the top 100 MSAs to participate in thousand-block numbering pooling, regardless of whether they are required to be LNP capable. This would further promote numbering resource optimization efforts. Although the CPUC presumes the Commission refers to all categories of carriers (wireline and wireless) in its proposal, we support extending pooling requirements to all covered CMRS providers, regardless of whether they are LNP capable.

Additionally, the CPUC supports the FCC's plan to require all MSAs included in Combined Metropolitan Statistical Areas (CMSAs) on the Census Bureau's list of the largest 100 MSAs to be included on the Commission's list of the top 100 MSAs. In an effort to further the Commission's goals of promoting competition and numbering resource optimization, all carriers in such MSAs should be required to provide LNP and participate in thousand-block number pooling. Furthermore, the CPUC believes the FCC should move beyond the largest 100 MSAs and extend these requirements to the top 200 MSAs. By

⁴ *Numbering Resource Optimization Third Report and Order* ¶1.

expanding the list of included MSAs, the CPUC believes it could extend the benefits of more efficient use of numbering resources to many medium-sized MSAs, which contain hundreds of rate centers and millions of available numbers that would otherwise remain stranded.

The CPUC also urges the FCC to give state commissions authority to require LNP and number pooling beyond these additional MSAs in areas where number pooling could save significant quantities of numbers. The factors states must consider, whether certain criteria must be met, and whether such authority should be subject to Commission approval are discussed in these comments. In addition, the CPUC would not support the FCC's suggestion to allow small or rural carriers to opt out of LNP-capability or pooling participation in such MSAs upon a showing that there are no competing carriers in the applicable geographic areas. Instead, the CPUC proposes that the Commission leaves this to each state's discretion, on an appropriate showing by the carrier, on a case-by-case basis.

III. DISCUSSION

A. The Commission should extend the Local Number Portability (LNP) requirements to all carriers operating in the largest 100 Metropolitan Statistical Areas (MSAs) regardless of whether they receive a request to provide LNP.

The CPUC has argued forcefully against forbearing from requiring LNP capability of covered CMRS providers, and continues to believe that requiring

LNP of covered CMRS carriers is essential to the FCC's goal of promoting competition.⁵ We will not repeat those comments here.

The benefits to competition and numbering resource optimization warrant a reinstatement of the original LNP requirement for all local exchange carriers and covered CMRS carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP. Extending the requirement to all carriers within the top 100 MSAs would allow for true competition between wireless carriers, as well as the opportunity for competition between wireline and wireless providers. Requiring LNP capability of all carriers would also eliminate the disparity between the wireline and wireless companies.

The LNP requirement would enable customers to more easily change providers and as such, promote true competition within the industry, a key goal of both the FCC and the CPUC for the past many years. Requiring incumbent LECs, large or small, to implement LNP is clearly important for fostering competition, since many incumbents' customers will not seriously consider taking their business to a competitive LEC if they have to change phone numbers. The argument for requiring competitive LECs to implement LNP to promote competition is also compelling. A customer will be more inclined to seek service from a CLEC if doing so does not require potential multiple phone number changes if the customer later moves to yet another phone company (competitor or incumbent). Horror

⁵ Comments of the CPUC, CC Docket No. 99-200, filed September 21, 2001, and Reply Comments, filed October 22, 2001.

stories about disastrous consequences to businesses of trying to switch service from the incumbent LEC to a competitive local phone company are familiar to regulators and well known among small businesses. Far fewer businesses will ever dare to try phone service from a competitive LEC, if in deciding to do so, they must weigh the possibility of having to change phone numbers in the future if it later is necessary to switch to a different carrier. It is thus important that all CLECs (and covered CMRS providers) as well as ILECs provide local number portability.

Furthermore, it is crucial to the development of competition between carriers that customers be able to switch service to and take their respective phone numbers to a competing carrier in a matter of days rather than months. Porting a phone number within six months of a bona fide request, as currently required by the FCC outside top 100 MSAs, is not fast enough to satisfy most customers.

More importantly, no showing has been made as to how the public interest would be better served by limiting competition within the wireless and wireline markets. To the contrary, reinstating the LNP requirement would further serve the public interest by enabling customers to move freely between carriers and therefore promote competition between and among carriers. The absence of number portability would impede competition as the Commission has found in many previous decisions.

The CPUC has also previously represented to the FCC that some customers in California have communicated to the CPUC that the need to change telephone

numbers is an impediment to changing service providers.⁶ Similarly, within the wireline markets, California's experience in area code changes has led us to believe that customers have a very personal interest in and attachment to their telephone numbers, including area codes.⁷ Consumers in California have reported to us that the ability to port one's telephone number is an important issue to them; requiring them to change their telephone numbers when changing service providers frustrates both the consumer and the development of competition. Accordingly, further limiting the LNP mandate to carriers who have received a bona fide request will harm both the public interest and the Commission's goal of promoting a true competition within the telecommunications industry.⁸

Additionally, if the FCC allowed forbearance of the LNP requirement for some classes of carriers, they would be violating the spirit, if not the language, of the 1996 Federal Telecommunications Act, which evinced a Congressional intent for competition to develop among and within all telecommunications markets.⁹ Moreover, the Commission itself has previously addressed the benefits of LNP deployment stating "... we emphasize that the competitive reasons that led us to mandate wireless number portability in the First Report and Order remain fundamentally valid: we sought to increase competition both within the CMRS

⁶ Comments of the CPUC, WT Docket No. 01-184, CC Docket No. 99-200, filed September 21, 2001, page, 15.

⁷ *Id.* at p. 15.

⁸ The wireless industry has been on notice for more than five years of the obligation to deploy LNP, and has been granted additional time to meet such obligation on numerous occasions. See Petition for Forbearance of the Cellular Telecommunications Industry Association, December 16, 1997 (*CTIA Petition*), p.9; *Memorandum Opinion and Order*, FCC 99-19, ¶¶28-29

marketplace and with wireline carriers, and found that this competition would provide incentives for all carriers to provide innovative service offerings, higher quality services and lower prices.”¹⁰

The CPUC therefore supports the Commission’s position that LNP contributes to the development of competition among alternative providers by allowing customers to respond to price and service changes without changing their phone numbers. In addition to the benefits to competition of requiring broad deployment of LNP, this deployment will also further the FCC’s goal of promoting number conservation. While cellular and PCS carriers have alleged recently that they can participate in thousand-block number pooling without implementing full LNP, other number conservation measures such as unassigned number porting (UNP) and individual telephone number (ITN) pooling would require LNP capability. These benefits therefore clearly weigh in favor of a reinstatement of the LNP mandate, regardless of whether a carrier receives a request from a competing carrier.

B. The Commission should not exempt certain small carriers that have switches either within the largest 100 MSAs or in areas adjoining the largest 100 MSAs, but provide service to no or few customers within the MSA, from the LNP requirement.

The Commission should not exempt such carriers from the LNP mandate. Instead, the FCC should confer authority on the states to make individual determinations of exemption on a case-by-case basis. Whether or not a particular

⁹ Comments of the CPUC, WT Docket No. 01-184, CC Docket No. 99-200, filed September 21, 2001, page

carrier would qualify for an exemption is a fact-specific question with numerous factors to be addressed, such as whether competition is authorized in the area of the carrier requesting the exemption, feasibility of upgrading the system network, the number of carriers operating within a local rate area, and whether the carrier's exchange is located within a local rate area shared with any other carrier with which numbers could be pooled. This decision should not hinge on the likelihood that a carrier might receive a request to port a number to another carrier, but rather on the existence of any other carriers operating in the rate center, which could share numbers from one or more NXXs. Two or three small carriers could conceivably operate in a top 100 rate center and target a class of customers that is perhaps never likely to request to port its numbers from one carrier to another, but it would be an extreme waste of numbers if each of those three carriers were to receive a whole NXX to provide customers perhaps only a few dozen phone numbers in the rate center.

California addressed just such a request for exemption from a ruling requiring carriers operating in the 408 Numbering Plan Area to donate 1,000-number blocks to the pooling administrator. Evans Telephone Company (Evans) sought such relief because it operated a single, small exchange within the 408 NPA, and was unable to participate in 1,000-number block pooling because of technical

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¹⁰ FCC 99-19, ¶40.

limitations.¹¹ In granting Evans an exemption, the CPUC considered various factors. Specifically, the CPUC looked at Evans pooling capability and noted that Evans's exchange was not located within a local rate area of any other carrier with which numbers could be pooled. The fact the exchange was not located within a local rate area shared with any other carrier with which numbers could be pooled convinced the CPUC that Evans request for exemption should be granted.

Accordingly, the CPUC urges the FCC to delegate to states the authority to exempt from the LNP requirements small carriers that have switches either within the largest 100 MSAs or in areas adjoining the largest 100 MSAs, in which LNP capability is otherwise required. Such requests should be decided on a case-by-case basis with the factors discussed above determining the appropriateness of permitting such an exemption.

C. The Commission should require all carriers in the top 100 MSAs to participate in thousand-block number pooling, regardless of whether they are required to be LNP capable.

As stated above, the CPUC strongly supports requiring LNP capability of all wireline and covered CMRS carriers in order to promote competition. Nonetheless, in case the FCC does not reinstate its LNP requirement, the CPUC supports the Commission's tentative conclusion that all carriers within the largest 100 MSAs should be required to participate in number pooling. This will assist in promoting further numbering resource optimization. Additionally, its

¹¹ Administrative Law Judge's Ruling Motion of Evans Telephone Company (U 1008 C) Regarding Number Pooling Ruling of July 26, 2001, Rulemaking 95-04-043/Investigation 95-04-044 (*Evans*).

implementation is essential to extending the life of the North American Numbering Plan by making the assignment and use of the central office, or NXX, codes more efficient.¹² Through pooling, we can effectively reduce the number of 1,000 blocks assigned to correspond more closely to a carrier's actual need, and thus further delay number exhaust. As stated in previous comments, further delay of implementation of national pooling until all carriers are LNP capable, would severely prolong inefficiencies existing in the current number allocation, and would hinder state and federal efforts to prevent or delay the exhaust of area codes of the NANP.

We believe, as does the Commission, that thousand-block number pooling provides the greatest benefits when participation is maximized.¹³

Moreover, wireless carriers have recently represented to the FCC that the underlying local routing number architecture is a prerequisite for pooling, but that full LNP capability is not necessary for pooling. As such, all carriers regardless of their individual LNP status should be required to participate in pooling.

Moreover, every non-pooling carrier can request blocks of 10,000 numbers even if their actual customer needs require only a small fraction of 10,000 additional numbers. The CPUC is aware of at least one non-LNP capable wireline carrier that has obtained numerous NXX codes in various rate centers where it has activated fewer than 25 of the 10,000 numbers in each NXX code. By requiring

¹² *Numbering Resource Optimization Third Report and Order*, ¶2.

¹³ *Numbering Resource Optimization Third Report and Order*, ¶4.

all carriers to participate in pooling, we work towards the goal of efficient allocation of numbers and number preservation, and thus delay number exhaust. We also continue to slow the rate at which public number resources are depleted, thus delaying the need for new area codes to be implemented, a benefit valuable to both carriers and the public.¹⁴

The CPUC has also represented to the Commission in prior comments that California faces a numbering crisis unparalleled in the United States.¹⁵ California therefore cannot continue to create new areas codes and to dispose of NXX codes in an unchecked fashion without imposing significant hardships on the public.¹⁶ The CPUC therefore urges the FCC to require all carriers to participate in number pooling regardless of their individual LNP capability in an effort to conserve the public resource of numbers.

The CPUC's most recent analysis of number pools operating in California shows that pooling has saved 497 NXX codes in California since implementing our first number pool in March 2000. (*See California Pooling Summary Chart attached to Comments.*) Successful number pooling requires both donors of blocks and users of blocks; one without the other cancels the effectiveness of pooling. Thus it is crucial to the success of pooling that the number pool be the only source of numbers available to carriers that are required to pool. Further, allowing one segment of the industry to continue to use numbers inefficiently,

¹⁴ Petition of the CPUC and the People of the State of California for Delegation of Additional Authority, NSD File No. L-97-42; CC Docket No. 96-98, filed April 23, 1999, p. 5.

¹⁵ *Id.* at p. 2.

when the FCC is aware that pooling is a very effective conservation measure, would be strongly inadvisable.

D. Small carriers or classes of carriers that utilize numbering resources should not be exempt from pooling requirements.

Even small carriers take more numbers than actually needed and therefore such carriers should not be exempt from participation in number pooling. In fact, carriers with both small and large customer bases place the same drain on public number resources. As a result, other carriers must forgo access to any given thousand-block irrespective of whether it is assigned to a small or large carrier. These carriers place a drain on the availability of numbering resources, which are a valuable public resource the FCC has an obligation to protect.

Furthermore, an exemption of small carriers from pooling requirements would violate the competitive neutrality requirement set forth in the Telecommunications Act of 1996. Specifically, the exemption would allow the Commission to discriminate against larger carriers in favor of smaller carriers, which violates the spirit of the Act, and is contrary to the public interest. Congress envisioned competitively neutral treatment of carriers generally, and the FCC's proposed exemption would not be competitively neutral. Smaller carriers should not be exempted from pooling merely because the FCC conjectures that they may have or that there is less competitive demand in the areas they serve. The

¹⁶ Id. at p. 2.

Commission's obligation is to ensure that numbers are allotted in a competitively neutral fashion.

The Commission itself has said that allocation of numbers in blocks of 10,000 has been a significant driver of premature NPA and NANP exhaust, while thousand-block pooling allows resources to be allocated in smaller blocks and thus free up stranded numbers and results in a significant savings of numbers.¹⁷ By contrast, pooling requirements continue to ensure the efficient use of valuable and scarce numbering resources and assist in the prevention of number exhaust. Pooling ensures that only those blocks that are actually needed are assigned to carriers, and therefore numbers are conserved.¹⁸ If all carriers participate in pooling, greater efficiencies will be achieved. The CPUC therefore urges the Commission to require all carriers to participate in pooling, regardless of their individual LNP capability.

If, however, the FCC were to consider adopting such an exemption, the CPUC recommends that granting of exemptions be undertaken at the state level. The CPUC has addressed this issue in previous comments and has stated that many factors would influence a CPUC decision to exempt a particular carrier from participating in pooling. Among them would be the following: demand for numbers and projected population growth in the NPA; whether the carrier has unused numbers in a rate center in which pooling carriers need additional

¹⁷ *Third Report and Order and Second Order on Reconsideration* in CC Docket No. 96-98 and CC Docket No. 99-200, (*Third Report and Order and Second Order on Reconsideration*), Released December 28, 2001, ¶ 9.

numbers; the number of carriers that would be affected; and how quickly carriers could implement LNP and thus results could be achieved.¹⁹ Given the fact-specific nature of the inquiry and evaluation, state commissions are best suited to consider exemption requests.

E. All MSAs included in the Combined Metropolitan Statistical Areas (CMSAs) on the Census Bureau's list of the largest 100 MSAs should be included on the Commission's list of the top 100 MSAs.

All MSAs included in the CMSAs on the Census Bureau's list of the top 100 MSAs should be included on the Commission's list of the top 100 MSAs, regardless of whether they appear on the list only as a result of their being combined with other MSAs into CMSAs. We support the FCC's position on focusing LNP and pooling efforts in the largest MSAs because these areas are most likely to have competitive markets that would benefit from those measures. However, the CPUC proposes that the FCC move beyond the top 100 MSAs and also include the top 200 MSAs because there are many medium-sized MSAs that could use numbers more efficiently. Expanding the top MSAs would therefore require more MSAs to deploy LNP and participate in number pooling, which would further the Commission's pro-competition goal and numbering resource optimization.

Moreover, by mandating that more carriers be LNP capable, customers will have more choice among carriers. Individuals can therefore move freely between carriers without fear of losing their telephone numbers, which in turn, would

¹⁸ Petition for Waiver, CC Docket No. 99-200, *Number Resource Optimization*, p. 5.

promote competition, price selection and service quality within the industry. In addition, more carriers participating in number pooling would further promote number conservation by allowing numbers to be taken in blocks of 1,000 as opposed to blocks of 10,000. Taking numbers in smaller blocks slows the exhaustion of numbers and assists in extending the life of the NANP.

F. The Commission should give states authority to require LNP and pooling in these additional MSAs.

The CPUC previously asserted that the FCC should delegate to states authority to require deployment of LNP, and reiterates its position in these comments.²⁰ When a state commission discovers that a wireline carrier has not deployed LNP, the state commission should have authority to order the carrier to implement LNP consistent with the FCC's prior orders.²¹ Further, until the non-compliant carrier has deployed LNP, the state commission should be authorized to instruct the NANP not to provide the carrier with additional numbering resources pending completion of LNP deployment.²² Were the states to have such authority, they would be able to ensure that carriers in a pooling NPA will be able to participate in pooling. The CPUC therefore urges the Commission to adopt a ruling allowing state commissions to order non-compliant carriers to deploy LNP technology.

G. Small or rural carriers should not automatically be able to opt out of participation in such MSAs upon a showing that there are no competing carriers in the applicable area.

¹⁹ Further Comments of the CPUC, CC Docket No. 99-200, filed February 14, 2000, page 17.

²⁰ Petition for Reconsideration and Clarification by the California Public Utilities Commission and the People of the State of California, CC Docket No. 99-200, filed September 15, 2000, page 14-15.

²¹ Id. at p.14-15

²² Id. at p. 14-15

The fact that the carrier is small or rural or that there are no competing carriers in the applicable area should not be an automatic basis for exemption from inclusion in the MSA. Instead, individual determinations of exemption should be left up to the states to make on a case-by-case basis. A showing that there are no competing carriers should create a presumption that number pooling is currently infeasible in a particular area, but this determination and the conditions for applying it should be made at the state level. Whether or not a particular carrier would qualify for an exemption is a fact-specific question with numerous factors to be addressed such as whether competition exists in the area of the carrier requesting the exemption, feasibility of upgrading the system network, number of exchanges operating within an local rate area, whether the carrier's exchange is located within a local rate area shared with any other carrier with which numbers could be pooled, or the capability of a carrier in technologically upgrading the network.²³

Accordingly, the CPUC urges the Commission to leave any requests for exemption from the MSA to the discretion of the states. Such requests should be made on an individual basis and the relevant state commission should take into consideration the factors discussed above in determining the appropriateness of permitting an exemption.

²³ Administrative Law Judge's Ruling Motion of Evans Telephone Company (U 1008 C) Regarding Number Pooling Ruling of July 26, 2001, Rulemaking 95-04-043/Investigation 95-04-044 (*Evans*). In *Evans*, California addressed a similar request for exemption from Evans Telephone Company (*Evans*) from a ruling requiring carriers operating in the 408 Numbering plan area to donate 1,000-number blocks to the pooling administrator.

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III. CONCLUSION

The efficient use of numbering resources is imperative, as is the need to eliminate inequities within the industry and further implement policies that are within the public interest. For the foregoing reasons, the CPUC urges the Commission to adopt the proposals outlined above.

Respectfully submitted,
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May 9, 2002

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

Implementation of the Local
Competition Provisions of the
Telecommunications Act of 1996

CC Docket No. 96-98

Telephone Number Portability

CC Docket No. 95-116

MOTION TO ACCEPT LATE-FILED COMMENTS

The California Public Utilities Commission (California or the CPUC) and the People of the State of California hereby submit this Motion to Accept Late-Filed Comments in response to the Third Order on Reconsideration in CC Docket No. 99-200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95-116 (Third Order) released on March 14, 2002 by the Federal Communications Commission (Commission) in the above-captioned matters.

The staff team dedicated to numbering issues at the CPUC is currently juggling many tasks, and assigned counsel took a pre-arranged vacation in April and May, which immediately preceded the due date for the comments in this

matter. For these reasons, the CPUC was unable to prepare and submit its Comments by May 6, 2002. Since the CPUC's comments were submitted only a few days after the May 6th due date, we do not believe that any party will be prejudiced by our late filing. We ask the FCC to accept these late-filed Comments.

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